



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,760	07/31/2001	Erez Michael	Q64010	2812

7590 08/16/2006
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3213

EXAMINER

SHELEHEDA, JAMES R

ART UNIT PAPER NUMBER

2623

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/917,760

Applicant(s)

MICHAEL ET AL.

Examiner

James Sheleheda

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-47.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



CHRIS KELLEY

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER

Continuation of 11. does NOT place the application in condition for allowance because: On page 2, of applicant's response, applicant argues that the claims require that the interactive system runs on the "existing" set top box. In response, it is noted that the claims merely require a set top box. No reference is made in regards to an "existing" set top box, nor is there any indication as to what exactly applicant means by "existing". Fig. 3 of Remillard clearly shows the device, 20, as being a "box" which is "set" on "top" of the television, thus clearly qualifying as a "set top box".

On page 3, of applicant's response, applicant argues that Remillard's system does not receive television programming from a television station.

Firstly, it is noted that set top box, 20, clearly receives television programming, as Remillard indicates that the device can capture images transmitted from the television station (column 3, lines 7-9 and column 9, lines 58-61). As the connection between the television and the set top box, 20, is only a one way connection (as seen in Fig. 3; column 6, lines 7-13), any television signals must pass through the set top box before transmission to the television. Furthermore, the set top box is specifically indicated as being utilized for pay-per-view services (column 3, lines 30-37 and column 9, lines 41-53), allowing the user to order specific programming and block restricted programs. Finally, Remillard explicitly states that an additional embodiment of the invention would provide access to interactive television services (column 4, lines 10-11). Thus, it is abundantly clear that, despite applicant's arguments, the set top box is clearly receiving television programming.

Secondly, it is further noted that the claim language merely requires that the set top box receive "digital television services". As the claims do NOT recite any requirements as to the types of television services, applicant's misinterpretation of Remillard would still read upon the current claim language, as applicant admits that the device clearly receives television images and "captures" them for editing/transmission (see applicant's response at page 3, lines 11-17).

On page 3, of applicant's response, applicant further argues that set top box, 20, is not the "existing set top box" as recited in the claims, but rather an add-on device to an existing digital television system.

In response, as indicated above, there is no requirement for an "existing set top box" nor is it clear as to what exactly applicant feels this means. Applicant has provided no explanation as to what exactly is meant by the term "existing set top box". The mere fact that Remillard's system is more advanced than applicant's does not negate the fact that it is clearly a television set top box and reads upon the current broad claim limitations.

In response to applicant's further arguments on pages 3-4, in regards to the differences between Remillard's system and applicant's invention, it is once again noted that Remillard's system meets the current broad claim limitations. The mere fact that Remillard's system is capable of many additional functionalities is irrelevant, as none of the differences outlined by applicant are required by any of the claims.